

APPEAL NO. 030140
FILED MARCH 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 16, 2002. The hearing officer determined that the compensable injury sustained by the respondent (claimant) on _____, includes an injury to her left knee and an aggravation of her preexisting left knee condition, and that the appellant (carrier) waived the right to contest compensability of the claimed injury. The carrier appeals this decision. The appeal file contains no response from the claimant.

DECISION

Affirmed.

Whether the _____, compensable injury includes the claimant's left knee, and whether the compensable injury aggravated a preexisting knee condition, were factual questions for the hearing officer to resolve. Conflicting evidence was presented at the hearing on the disputed issues in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the carrier waiver issue, the hearing officer explained that the carrier did not waive its right to contest compensability of the claimed injury under the provisions of Section 409.021(a); rather it failed to comply with the provisions of Section 409.021. Sections 409.021(c) and (d) provide:

- (c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.
- (d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

The evidence reflects that the carrier received written notice of the claimed injury on _____, but did not contest compensability until June 3, 2002. The hearing officer determined that the carrier's dispute, which was filed more than 60 days after

receiving notice of the injury, was not based on newly discovered evidence that could not reasonably have been discovered earlier. Consequently, the hearing officer determined that the carrier waived its right to contest compensability. We perceive no error in the hearing officer's application of Section 409.021 or her resolution of the waiver issue.

The carrier also contends that, as this is an extent-of-injury issue, Section 409.021 does not apply. In recent decisions addressing carrier waiver, we have held that a carrier may not avoid the mandates of Section 409.021 by recasting the primary injury as an extent-of-injury issue. See Texas Workers' Compensation Commission Appeal No. 021907, decided September 16, 2002; Texas Workers' Compensation Commission Appeal No. 021569, decided August 12, 2002; and Texas Workers' Compensation Commission Appeal No. 022183, decided October 9, 2002. The evidence is clear, in this case, that the primary claimed injury was to the left knee. As such, the hearing officer did not err in determining the carrier waived its right to contest compensability under Section 409.021.

The hearing officer's decision and order is affirmed.

The true corporate name of insurance carrier is **AIG** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge